

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sergio Guerra	Team: Squad #4	CCRB Case #: 201504343	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 05/27/2015 8:00 AM	Location of Incident: § 87(2)(b)	Precinct: 122	18 Mo. SOL 11/27/2016	EO SOL 11/27/2016	
Date/Time CV Reported Fri, 05/29/2015 12:49 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 05/29/2015 12:49 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Timothy Donnelly	01534	920225	123 DET

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Frank Lupo	08621	928677	123 DET

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Timothy Donnelly	Abuse: Det. Timothy Donnelly searched the car that belonged to § 87(2)(b) at § 87(2)(b) in Staten Island.	§ 87(2)(b)
B.DT3 Timothy Donnelly	Abuse: Det. Timothy Donnelly entered § 87(2)(b)'s house at § 87(2)(b) in Staten Island.	§ 87(2)(b)

### **Case Summary**

On May 27, 2015, at approximately 08:00 a.m., PO Frank Lupo and Det. Timothy Donnelly went to § 87(2)(b)'s residence at § 87(2)(b), in relation to an I-card for allegedly destroying his ex-wife's mailbox the previous day. § 87(2)(b) refused to come to the door. Det. Donnelly opened the rear passenger's side door of § 87(2)(b)'s unlocked Hummer, which was parked in the driveway on the side of the house, and allegedly searched it (**Allegation A**). After knocking on § 87(2)(b)'s back door and speaking to § 87(2)(b)'s uncle, § 87(2)(b) who lived next door, Det. Donnelly climbed onto § 87(2)(b)'s porch and allegedly opened a window screen, sticking his head and shoulders into the house (**Allegation B**). Following this, PO Lupo and Det. Donnelly left the scene. On May 28, 2015, § 87(2)(b) turned himself in and was arrested at the 123<sup>rd</sup> Precinct stationhouse for § 87(2)(b). There is no video footage of the incident.

### **Mediation, Civil, and Criminal Histories**

§ 87(2)(b) declined mediation. As of September 3, 2015, he has not filed a Notice of Claim with the City of New York and has surpassed the 90-day filing period. § 87(2)(b) [§ 86(1)(3)&(4)] [§ 87(2)(g)]  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b) (Board Review 1).

### **Civilian and Officer CCRB Histories**

This is the first CCRB complaint filed by § 87(2)(b) (Board Review 2).

Det. Timothy Donnelly has been a member of the NYPD for 17 years. He has had 5 previous CCRB cases with 13 allegations, none of which have been substantiated.

PO Frank Lupo has been a member of the NYPD for 14 years. He has had 9 previous CCRB cases with 22 allegations, including the substantiation of a vehicle search and discourtesy, whereby the NYPD issued instructions.

### **Findings and Recommendations**

#### **Explanation of Subject Officer Identification**

Although § 87(2)(b) attributed his allegations to PO Frank Lupo, Det. Timothy Donnelly identified himself as going to § 87(2)(b)'s vehicle and attempting to speak to § 87(2)(b) through the window (see Det. Donnelly's statement) § 87(2)(g)  
§ 87(2)(b)

#### **Allegations not Pleaded**

It is undisputed that on May 27, 2015, § 87(2)(b) called PO Frank Lupo (Board Review 3). In § 87(2)(b)'s call to Intake, § 87(2)(b) alleged that PO Lupo refused to provide his shield number over the phone. However, during his CCRB statement two weeks later, § 87(2)(b) provided a detailed statement concerning the phone call and did not allege PO Lupo's refusal to provide his shield number. A subsequent follow-up call was made to § 87(2)(b) two weeks later. When § 87(2)(b)

§ 87(2)(b) was asked if he asked PO Lupo to identify himself, § 87(2)(b) stated, “I don’t think so.” However, when reminded of his allegation in the Intake call, he stated, “I did, yes, and he refused to give it to me.” § 87(2)(b) then stated that when he asked for PO Lupo’s shield number, PO Lupo became quiet. Despite having stated this, § 87(2)(b) followed up by saying, “I’m going to be honest. I don’t truly remember exactly, but it was ‘no.’ There was a ‘no.’” § 87(2)(g)

§ 87(2)(b)

## **Recommendations**

### **Allegation A-Abuse: Det. Timothy Donnelly searched the car that belonged to § 87(2)(b)**

§ 87(2)(b)

It is undisputed that Det. Timothy Donnelly opened the rear passenger’s side door of § 87(2)(b) s vehicle. § 87(2)(g)

§ 87(2)(b)

Both § 87(2)(b) and his uncle, § 87(2)(b) alleged that PO Frank Lupo, whom the investigation determined to be Det. Timothy Donnelly, opened § 87(2)(b) s unlocked Hummer, which was parked in the driveway on the side of the house, and entered inside. § 87(2)(b) alleged that the officer leaned inside of the vehicle with the top half of his body and then opened the passenger’s side back door, while § 87(2)(b) stated that the officer was in the front passenger’s side with one leg in and the other leg outside of the vehicle (Board Review 4 and 5).

During PO Frank Lupo’s in-person statement he denied that either he or Det. Donnelly went into § 87(2)(b) s vehicle. However, PO Lupo did state that he could see that no one was inside of the vehicle, so he did not stop to look to see what was inside. PO Lupo also had an active I-card issued for § 87(2)(b) s arrest (Board Review 6).

During Det. Timothy Donnelly’s in-person statement, he acknowledged that he opened the unlocked rear passenger’s side door of § 87(2)(b) s vehicle, looked inside, saw no one, and closed the door. Det. Donnelly stated that he did so for the officers’ safety, as he could not tell what was inside, characterizing the vehicle as “huge,” almost like a “monster truck,” with 4 foot tall tires and a door handle above his head. He also stated that in case § 87(2)(b) was inside, he did not want the vehicle to back up and run anyone over. Det. Donnelly stated that he did not place any part of his body inside of the vehicle. Following this, Det. Donnelly knocked on § 87(2)(b) s back door, to which § 87(2)(b) stated, “What?” from the second floor of the house. During his CCRB interview, when asked if an I-card allows an officer to enter a vehicle, Det. Donnelly stated no (Board Review 7).

As noted in *People v. Young*, “Where an action is undertaken so as to expose an area in the car which is not readily observable from the outside, then the action does constitute a search within the meaning of the Fourth Amendment.” (see Board Review 8, *People v. Young* 207 A.D.2d 465 [1994])

Moreover, as continued in *People v. Young*, as well as *People v. Gambino* and *People v. David L*, a search of a motor vehicle is justified if “probable cause” exists to believe it contains contraband, criminal activity is afoot, or the officer has an articulable basis to fear for his own safety (see Board

Review 9, People v. Gambino 42 Misc. 3d 1216(A) [2014]; see Board Review 10, People v. David L. 56 N.Y.2d 698 [1982]).

§ 87(2)(g)

**Allegation B-Abuse: Det. Timothy Donnelly entered § 87(2)(b):**

During § 87(2)(b)'s in-person interview, he stated that after PO Frank Lupo, whom the investigation determined to be Det. Timothy Donnelly, climbed up onto his porch, Det. Donnelly allegedly opened the screen of one of the windows and stuck his head and shoulders inside of the house (Board Review 4).

§ 87(2)(g)

To begin, during § 87(2)(b)'s telephone call to the CCRB's Intake Unit, he did not allege that Det. Donnelly entered into his house as described above. Additionally, when § 87(2)(b) was contacted by the investigation to schedule an interview, he provided a brief description of the incident, again failing to make the allegation. It was only during § 87(2)(b)'s in-person statement that the allegation was made (Board Review 4, 14, and 15).

Secondly, § 87(2)(b) whom § 87(2)(b) considers an uncle and who was standing in the driveway at the side of § 87(2)(b)'s residence in full view of the porch, stated that he observed Det. Donnelly speaking from outside of the porch window in the squat position (Board Review 5).

Lastly, although PO Lupo stated that he never observed Det. Donnelly on the porch (Board Review 6), Det. Donnelly was firm in stating that he spoke through an open porch window, but never entered through it (Board Review 7).

§ 87(2)(g)

Squad: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Date

Squad Leader: \_\_\_\_\_  
Title/Signature Print Date

Attorney: \_\_\_\_\_  
Title/Signature Print Date